

PT 95-6
Tax Type: PROPERTY TAX
Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
SPRINGFIELD, ILLINOIS

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BASILEAN FILMS FOUNDATION, INC.      )   Docket No.(s)  93-22-344  
                                     )   PI No.(s)    09-01-204-005  
                                     )   (DuPage County)  
                                     )  
Applicant                           )  
                                     )  
v.                                  )  
                                     )  
                                     )  
                                     )  
THE DEPARTMENT OF REVENUE             )   George H. Nafziger  
OF THE STATE OF ILLINOIS             )   Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

APPEARANCES Attorney Dan Walker, Jr., appeared on behalf of Applicant. Mr. Robert G. Rybica, assistant state's attorney of DuPage County, appeared on behalf of the DuPage County Board of Review.

SYNOPSIS The hearing in this matter was held at 100 West Randolph Street, Chicago, Illinois, on December 14, 1994, to determine whether or not DuPage County parcel No. 09-01-204-005 and the buildings thereon, should be exempt from real estate tax for the 1993 assessment year.

Is Applicant a religious, and/or a charitable organization? Did Applicant own the parcel here in issue during all, or part of the 1993 assessment year? Did Applicant use all, or part of the parcel here in issue and the buildings thereon, for primarily religious, and or/charitable purposes during the 1993 assessment year? Following the submission of all the evidence and a review of the record, it is determined that Applicant is a religious and charitable organization. It is further determined that Applicant owned the parcel here in issue during the period May 10, 1993, through December 31, 1993. Finally, it is determined that since no evidence

was offered, either that Dr. Hamilton was required to live in this house because of his exempt duties for Applicant, or that he performed any of his exempt duties in the residential portion of this house, that said residential portion of the house did not qualify for exemption during the period May 10, 1993, through December 31, 1993.

FINDINGS OF FACT The Department's position in this matter, namely that the parcel here in issue and the buildings thereon, did not qualify for exemption during 1993, was established by the admission in evidence of Department's Exhibits 1 through 6B.

On November 30, 1993, the DuPage County Board of Review forwarded an Application for Property Tax Exemption To Board of Review, concerning the parcel here in issue for the 1993 assessment year to the Illinois Department of Revenue (Department's Exhibit 2). On August 4, 1994, the Department of Revenue notified Applicant that it was denying the exemption of the parcel here in issue for the 1993 assessment year (Department's Exhibit 3). By a letter dated August 18, 1994, Applicant's Executive Director, Dr. Hamilton, requested a formal hearing in this matter (Department's Exhibit 4). The hearing held on December 14, 1994, was held pursuant to that request.

Applicant was incorporated in the State of Delaware on November 13, 1974, for purposes which included the following:

"To be an operating foundation for the production and distribution of educational, cultural, and religious films, radio and television programs, printed publications, and other media communication."

Dr. Hamilton holds a Ph.D in Communications from the University of Southern California, and is the executive director and the only full-time employee of Applicant. Applicant writes, produces, and edits religious video tapes, audio tapes, and books for Christian churches and church-related organizations located throughout the United States, Canada, and the rest of

the world.

Applicant acquired the parcel here in issue and the building thereon, by a quitclaim deed, dated May 10, 1993, from Dr. Hamilton and his wife. Dr. and Mrs. Hamilton had lived in the house on this parcel before they conveyed it to Applicant, and have continued to occupy a portion of it as their residence since that conveyance.

The parcel here in issue is improved with a two-story house with a basement, and a frame garage. The basement of the house, during 1993, contained a sound studio, a film editing room, and a film vault. The first floor of the house, during 1993, contained a reception area, program services office, a media library, a dining/conference room, and a kitchen. The second floor of the house contained three bedrooms, two baths, a utility room, and the executive director's office. All of the basement and the first floor, except for the dining/conference room, and the kitchen, as well as the executive director's office, and one bathroom on the second floor, were primarily used for Applicant's corporate purposes of writing, producing, and editing video tapes, audio tapes, and books during the period May 10, 1993, through December 31, 1993. The dining/conference room and the kitchen on the first floor, as well as the bedrooms, one bath, and the utility room on the second floor, were primarily used by Dr. Hamilton and his family as their residence during the period May 10, 1993, through December 31, 1993. During the period May 10, 1993, through December 31, 1993, the garage was used for the storage of one ministry vehicle and one personal vehicle belonging to Dr. and Mrs. Hamilton.

During the period May 10, 1993, through December 31, 1993, Dr. Hamilton testified that he and his family occupied the residential portion of the house on the parcel here in issue as the caretakers of Applicant's property. He further testified that the caretaker's duties performed by his family included maintaining and cleaning the building and grounds.

During the period May 10, 1993, through December 31, 1993, Applicant's primary activities included the writing, production, and editing of religious video tapes, audio tapes, and books, for Christian organizations world-wide. Applicant's sources of income during that period included fees for services, and also contributions. During that period, Applicant waived or reduced its fees for services and prices for products, based on the customers' ability to pay. During the period here in issue Applicant had no capital, capital stock, or shareholders, and no one profited from the enterprise. Applicant used the portion of the building which it occupied during the period May 10, 1993, through December 31, 1993, for primarily charitable and religious purposes. The areas occupied by Dr. Hamilton and his family, during the period May 10, 1993, through December 31, 1993, were used primarily for residential purposes.

1. Based on the foregoing, I find that Applicant is a religious and charitable organization.

2. I further find that Applicant owned the parcel here in issue and the house and garage located thereon, during the period May 10, 1993, through December 31, 1993.

3. The areas of the house, including all of the basement, the first floor, except for the dining/conference room and the kitchen, and the executive director's office and one bathroom on the second floor and one half of the garage, I find during the period May 10, 1993, through December 31, 1993, were used primarily for religious and charitable purposes.

4. The dining/conference room and the kitchen on the first floor of the house, as well as the bedrooms, one bath, and the utility room on the second floor of the house, and one-half the garage, I find, were used primarily for residential purposes during the period May 10, 1993, through December 31, 1993.

CONCLUSIONS OF LAW Article IX, Section 6, of the Illinois

Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

35 ILCS 205/19.2 (1992 State Bar Edition), (1991 Illinois Revised Statutes, Chapter 120, Paragraph 500.2), exempts certain property from taxation in part as follows:

"All property used exclusively for religious purposes, or used exclusively for school and religious purposes,...."

35 ILCS 205/19.7 (1992 State Bar Edition), (1991 Illinois Revised Statutes, Chapter 120, Paragraph 500.7), exempts certain property from taxation in part as follows:

"All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;...."

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967).

Illinois Courts have previously held that real estate owned by religious and charitable organizations which publish and sell religious books and tracts and which give away said items in cases of need, qualify for exemption. See, *The Congregational Sunday School and Publishing*

Society v. Board of Review 290 Ill. 108 (1919), and also see Inter-Varsity Christian Fellowship v. Hoffman, 62 Ill.App.3d 798 (1978). Based on the foregoing, I conclude that the parcel here in issue, the area of the house and garage used by Applicant in its activities of writing, producing, and editing Christian videos, audio tapes, and books, and providing said items at reduced prices, or free, in cases of need, qualified for exemption during the period May 10, 1993, through December 31, 1993.

The Supreme Court in MacMurray College v. Wright, 38 Ill.2d 272 (1967), in considering whether or not faculty housing at a college qualified for exemption, applied a two-part test. First, were the residents of the houses required to live in the residences because of their exempt duties for the organization, or were they required to, or did they perform any of their exempt duties there? The Appellate Court has more recently applied the MacMurray tests to caretakers' residences in Benedictine Sisters of the Sacred Heart v. Department of Revenue, 115 Ill.App.3d 325 (1987), which involved three caretakers housed on the property of a convent, Lutheran Child and Family Services of Illinois v. Department of Revenue, 160 Ill.App.3d 420 (1987), and Cantigny Trust v. Department of Revenue, 171 Ill.App.3d 1082 (1988). See also Girl Scouts of DuPage County Council, Inc. v. The Department of Revenue, 189 Ill.App.3d 858 (1989), and also The People v. Avery Coonley School, 12 Ill.2d 113 (1957). The caretaker's duties testified to by Dr. Hamilton, namely maintaining and cleaning the house on the parcel here in issue, were clearly not exempt duties. In addition, no evidence was offered either that Dr. Hamilton was required to live in the house because of his exempt duties for Applicant, or that he performed any of his exempt duties for Applicant in the residential portion of said house.

I therefore conclude that Applicant is a religious and charitable organization, which owned the parcel here in issue during the period May

10, 1993, through December 31, 1993. I also conclude that Applicant used the basement, the first floor, except the dining/conference room and the kitchen, as well as the executive director's office, and one bathroom on the second floor, and one-half of the garage and the land on which the garage is located, for religious and charitable purposes during the period May 10, 1993, through December 31, 1993.

I therefore recommend that DuPage County parcel No. 09-01-204-005 be exempt from real estate tax for 65% of the 1993 assessment year, except for the house and the land on which it stands, and the garage and the land on which it stands. Concerning the house, I recommend that the percentage of the square footage of the house contained in the basement, the first floor, except for the dining/conference room, and the kitchen plus the executive director's office, and one bathroom on the second floor, be exempt from real estate tax for 65% of the 1993 assessment year. That same percentage of the land on which the house stands should also be exempt for 65% of 1993. Concerning the garage, I recommend that one-half of the garage and one-half of the land on which it stands, be exempt for 65% of the 1993 assessment year.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge

February , 1995